IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 15816 of 2007(G)

OS.266/2001 of ADDL.SUB COURT,KOLLAM

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PETITIONER: 3RD DEFENDANT

SRILETHA R.NAIR, W/O.GOPALAKRISHNAN T.A.
SREESYLAM, P.O. CHANDANATHOPE, KOLLAM.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS: PLAINTIFF

UNNIKRISHNAN NAIR, S/O.KESAVAN NAIR,
KESAVAMANGALATH VEEDU, PUNNATHALACHERRY,
KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE DISPUTED PROMISSORY NOTE

EXT.P2: -DO- OF THE AFFIDAVIT AND PETITION SEEKING TO SEND THE DISPUTED DOCUMENT FOR EXPERT OPINION

EXT.P3: -DO- COPY OF THE ORDER IN I.A. 3080/2006 IN O.S. 266/01

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 15816 OF 2007 G

Dated this the 9th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order in I.A.3080/06 in O.S.266/01 of the Additional Subordinate Judge, Kollam. The suit is one for realisation of the amount due under a promissory note alleged to be executed by three defendants. I am informed that the first defendant has not chosen to enter appearance and defendants 2 and 3 had entered appearance and filed a written statement disputing execution of the promissory note. Though the suit is of the year 2001 the petition for sending comparison of signature comes up only in 2006 and such conduct of the defendants have to be deprecated because it will only result in unnecessary prolongation of the suit. But, at the same time when there is a denial of execution of the document and the signature is disputed it is desirable to have some scientific evidence before the court. I am conscious of the fact that Section 73 of the Evidence Act permits the court for comparison of signature but the Apex Court has held that it is an hazardous task and the court should not resort to that as far as possible and further that such comparison can be only used as a corroborative piece of evidence and not the sole criteria

for deciding the execution of the document. So, when there is dispute regarding the genuineness of the signature it is only just and reasonable to permit that document to be sent for expert opinion. But the prayer that it has to be sent along with the signature in vakalath and written statement may not be strictly correct for the reason that when a person wants to deny the execution of a document he will start changing his signatures right from the moment that such a thing develops in his mind. Therefore the disputed document along with the admitted signatures of the defendant which is anterior in point of time to the execution of document can be produced and that can be sent for comparison of the signature (all original). The court, if so feels, may also take the specimen handwriting from the court and also send it along with the same. Therefore, the order under challenge is set aside and the interim application is allowed and the document is directed to be sent for expert opinion as indicated in the previous paragraphs. The court should ensure that there is no unnecessary delay in sending the document for comparison and also must inform the authority to whom it is send to have an expeditious comparison so that the trial of the

suit is not unnecessarily delayed. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj